

# The Atchison, Topeka and Santa Fe Railway Company

80 East Jackson Boulevard  
Chicago, Illinois 60604



1 5688  
RECORDATION NO. \_\_\_\_\_ FILED 1988 June 13, 1988

JUN 14 1988 12:15 PM

INTERSTATE COMMERCE COMMISSION  
Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

No. 8-166A049  
Date JUN 14 1988  
Fee \$ 13.00

JUN 14 12 03 PM '88  
NOTICE OF FILING

ICC Washington, D.C.  
Re: The Atchison, Topeka and Santa Fe Railway Company,  
Equipment Trust, Series 6, dated March 1, 1988

Dear Secretary:

Enclosed herewith please find an original and one counterpart of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is an equipment trust agreement, a primary document, dated as of March 1, 1988.

The name and addresses of the parties to this document are:

The Company, as Lessee:

The Atchison, Topeka and Santa Fe Railway Company  
80 East Jackson Boulevard  
Chicago, IL 60604

The Trustee, as Trustee and Lessor:

Harris Trust and Savings Bank  
111 West Monroe Street  
Chicago, IL 60690

The equipment covered by Equipment Trust Agreement, Series 6, is described on Exhibit 1.

For the convenience of the parties, I have enclosed eight additional counterparts of the agreement, which I would like to have returned bearing the recordation information.

*Counterpart Sanders*

June 13, 1988  
Page 2

A check in the amount of \$13 is also enclosed in payment of the Commission's prescribed recordation fee.

Very truly yours,

A handwritten signature in cursive script that reads "Gus Svolos".

Gus Svolos  
Vice President-Law

JQG/IEW/jam  
Enclosures

0397zp46

EQUIPMENT TRUST, SERIES 6  
Dated March 1, 1988

## SCHEDULE A

<u>Quantity</u>	<u>Type</u>	<u>Estimated Cost</u>	
		<u>Per Unit</u>	<u>Total</u>
23	2300 HP Diesel Electric Locomotives, Original GMC (EMD) Model GP39-2; ATSF, Remanufacturer; Nos. 3427 to 3449, both inclusive.	\$505,000	\$11,615,000
37	3000 HP Diesel Electric Locomotives, Original GMC (EMD) Model SD40-2; ATSF, Remanufacturer; Nos. 5020 to 5036, both inclusive and Nos. 5038 to 5057, both inclusive.	628,000	23,236,000
17	3600 HP Diesel Electric Locomotives, Original GMC (EMD) Model SD45-2; ATSF, Remanufacturer; Nos. 5852 to 5868, both inclusive.	546,200	9,285,400
8	3600 HP Diesel Electric Booster (cabless) Locomotives, Original GMC (EMD) Model SD45-2; ATSF, Remanufacturer; Nos. 5510 to 5517, both inclusive.	538,500	4,308,000
4	Locomotive Electric Power Units, Six-Axle, Original GMC (EMD); ATSF, Remanufacturer; Nos. 141 to 144, both inclusive.	<u>160,000</u>	<u>640,000</u>
<hr/>			
89			\$49,084,400
==			=====

**Interstate Commerce Commission**  
Washington, D.C. 20423

6/18/88

OFFICE OF THE SECRETARY

Gus Svolos  
The Atchison Topeka & Santa Fe Railway Company  
30 East Jackson Blvd.  
Chicago, Illinois 60604

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/14/88 at 12:15pm, and assigned recordation number(s). 15688

Sincerely yours,

*Narta L. McEneaney*  
Secretary

Enclosure(s)

1 5688  
RECORDATION NO. \_\_\_\_\_ FILE NO. \_\_\_\_\_

JUN 14 1988 - 12 15 PM

INTERSTATE COMMERCE COMMISSION

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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
EQUIPMENT TRUST, SERIES 6

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EQUIPMENT TRUST AGREEMENT  
Dated as of March 1, 1988

Between

HARRIS TRUST AND SAVINGS BANK,  
as Trustee,

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

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SCHEDULE A - DESCRIPTION OF TRUST EQUIPMENT		

This Equipment Trust Agreement, dated as of March 1, 1988, by and between HARRIS TRUST AND SAVINGS BANK, an Illinois corporation, as Trustee, (hereinafter called the "Trustee") and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, (hereinafter called the "Company"),

WITNESSETH:

WHEREAS, the Company has contracted or arranged for the remanufacture, construction and/or acquisition and the transfer to the Trustee of the railroad equipment described herein; and

WHEREAS, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

WHEREAS, the Atchison, Topeka and Santa Fe Railway Company Equipment Trust Certificates, Series 6 (hereinafter called "Trust Certificates"), are to be issued and sold in one or more installments having an aggregate principal amount of \$49,084,000 (the "Total Authorized Issue"), and the net proceeds of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided will constitute a fund to be equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as The Atchison, Topeka and Santa Fe Railway Company Equipment Trust, Series 6, and to be applied by the Trustee from time to time in all or part payment of the Cost of the Trust Equipment, the remainder, if any, of the Cost thereof to be paid out of Advance Rentals to be paid by the Company as provided herein;

WHEREAS, the texts of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the forms hereinafter set forth; and

WHEREAS, it is desired to secure to the Holders of the Trust Certificates the payment of the principal thereof and interest thereon as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Parties hereto hereby agree as follows:

## ARTICLE ONE

## FORMS OF TRUST CERTIFICATES AND GUARANTY

SECTION 1.1. Forms of Trust Certificates and Guaranty. The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms:

[Form of Trust Certificate]

PURSUANT TO THE EQUIPMENT TRUST AGREEMENT,  
THE EQUIPMENT TRUST CERTIFICATES ARE BEING  
ISSUED TO FINANCE NOT EXCEEDING 100%  
OF THE COST OF THE TRUST EQUIPMENT

No. 6R\_\_\_\_\_

\$\_\_\_\_\_

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Equipment Trust Certificates, Series 6

Total Authorized Issue: \$49,084,000

8.9% Trust Certificate  
due March 1, 1998

HARRIS TRUST AND SAVINGS BANK, Trustee

Interest Payable Semiannually

HARRIS TRUST AND SAVINGS BANK, as Trustee (hereinafter called the "Trustee") under an Equipment Trust Agreement, dated as of March 1, 1988 (the "Agreement"), by and between the Trustee and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (hereinafter called the "Company"), hereby certifies that \_\_\_\_\_ or registered assigns, is entitled to an interest in the principal amount of \_\_\_\_\_ Dollars in THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY EQUIPMENT TRUST, SERIES 6, payable at its principal office in the City of Chicago, State of Illinois in ten (10) equal annual installments of principal on each March 1 from March 1, 1989 to and including the final due date stated above without the need for presentation and surrender of this Trust Certificate to the undersigned, and to payment of interest on the principal amount outstanding from time to time payable semiannually on March 1 and September 1 of each year, beginning as of September 1, 1988, at the rate per annum specified in the heading hereof from the date hereof, until said due date, at said office of the

undersigned, with interest at 9.9% per annum on any unpaid principal and on any unpaid interest to the extent that it shall be legally enforceable, until such principal and interest shall be paid in full, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of Rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Agreement. Interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months. Notwithstanding the provisions of the preceding sentence, in the case of payments of interest and annual installments of principal on this Trust Certificate, the undersigned, as provided in Section 8 and Schedule I of the Purchase Agreements to which the Original Purchasers are parties, and otherwise upon request of the registered Holder hereof, will, subject to timely receipt of Rentals under the Agreement, mail its check to such registered Holder at its address shown on the registry books maintained by the undersigned, or, as provided in Section 8 and Schedule I of the Purchase Agreements to which the Original Purchasers are parties, and otherwise upon the request of the Holder for wire transfer, will wire immediately available funds to the account of such registered Holder at such bank as it may designate by notice in writing to the Trustee prior to the date that payment is due.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount equal to the Total Authorized Issue set forth above, and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or, in lieu thereof, as provided in the Agreement, cash or obligations defined in the Agreement as "Investments") is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the undersigned at its principal office in the City of Chicago, State of Illinois) for a more complete statement of the terms and provisions thereof, to all of which the registered Holder hereof, by accepting this Certificate, assents. The terms defined in the Agreement and not otherwise defined herein are used herein with the same meanings.

The Trust Certificates are issuable in denominations of \$1,000,000, and any larger integral multiple of \$1,000 except as may be necessary to reflect any portion of the aggregate principal amount of the Trust Certificates not evenly divisible by \$1,000, as fully registered Trust Certificates, and the several denominations

of Trust Certificates are interchangeable upon presentation thereof at the principal office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

Subject to the provisions of Section 3.5 of the Agreement, this Certificate is transferable by the registered Holder hereof, in person or by duly authorized attorney, on the books of the undersigned upon surrender hereof to the undersigned at its said office accompanied by appropriate instruments of assignment and transfer, duly executed by the registered Holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon a new Trust Certificate or Certificates for the then unpaid aggregate principal amount hereof of the same maturity and rate will be issued to the transferee in exchange herefor and if less than the then entire unpaid principal amount hereof is transferred, a Trust Certificate for the balance thereof will be issued to the transferor. Prior to due presentment for registration of transfer, the undersigned and the Company shall be entitled to deem and treat the registered Holder hereof as the absolute owner for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

The Trust Certificates may be prepaid upon at least thirty days', but not more than sixty days', notice at the option of the Company, as a whole or in part, at any time or times on or after March 1, 1993 at the following prepayment prices (expressed in percentages of the principal amounts remaining outstanding on the Trust Certificates at prepayment), in each case together with accrued interest to the date fixed for prepayment. If prepaid during the twelve-month period beginning March 1

<u>Year</u>	<u>The Prepayment Price Shall Be:</u>
1993	104%
1994	103%
1995	102%
1996	101%
1997	100%

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount remaining outstanding and interests accrued and unpaid represented by this Certificate may be declared, or may become, due and payable as provided in the Agreement.

This Trust Certificate shall not be deemed a promise to pay of the Trustee in its individual capacity and shall not be valid unless its corporate seal hereon shall be manually attested by an Assistant Secretary of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Trust Certificate to be signed by one of its Vice Presidents and its corporate seal to be hereunto affixed and to be attested by an Assistant Secretary.

Dated:

HARRIS TRUST AND SAVINGS BANK,  
as Trustee

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary



## [Form of Guaranty]

## GUARANTY

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered Holder of the within Trust Certificate the prompt payments of the principal of said Certificate, and of interest thereon at the rate specified in said Certificate with interest on any overdue principal and, to the extent legally enforceable, on any overdue interest, at the rate of 9.9% per annum, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

IN WITNESS WHEREOF, the Company has caused this Guaranty to be signed by its President or Senior Vice President or by one of its Vice Presidents and its corporate seal to be hereunto affixed.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By \_\_\_\_\_  
Vice President

## ARTICLE TWO

## DEFINITIONS

SECTION 2.1. Definitions. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Advance Rentals shall mean the amounts payable by the Company to the Trustee as Advance Rentals under Sections 5.2 and 6.4(A).

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, control (including controlled by and under common control with), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Casualty Occurrence shall have the meaning specified in Section 6.7.

The Casualty Value of any unit of Trust Equipment shall be considered to be the Cost thereof, less depreciation accrued on such unit of Trust Equipment on each March 1 commencing March 1, 1989 at a rate of 1/10th of the Cost thereof per annum, provided, however, that the Casualty Value of any unit of Trust Equipment shall never be less than the amount determined by multiplying the entire aggregate outstanding principal amount of all Certificates on the date of determination by a fraction of which the numerator shall be the Cost of such unit of Trust Equipment and the denominator shall be the aggregate Cost of all Equipment originally constituting Trust Equipment (not giving effect to the Casualty Occurrence in question or any prior Casualty Occurrence; provided, further, however, that the aggregate Casualty Value of all of the existing units of the Trust Equipment together with any cash deposited with the Trustee pursuant to Section 6.07 or 6.11 hereof shall at all times equal or exceed the principal amount of the then outstanding Trust Certificates.

Company shall mean The Atchison, Topeka and Santa Fe Railway Company and any successor or successors thereto.

Cost, when used with respect to Equipment, shall mean the actual cost of the remanufacture thereof, as invoiced to the Trustee hereunder, and shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission in effect at such time, sound accounting practice.

Date of Original Issue with respect to the Trust Certificates shall mean the date the same were executed and issued to the initial purchasers thereof pursuant to Section 3.1 of this Agreement.

Default shall mean any default or other event which, with notice or the lapse of time or both, would constitute an Event of Default.

Deposited Cash shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 3.1, including any Advance Rentals due therewith, and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 10.7, and (b) any sums restored to Deposited Cash from Rentals pursuant to Section 6.4(B)(1)(b) and on deposit with the Trustee.

Equipment shall mean standard-gauge new or remanufactured diesel electric locomotives and locomotive units as at any time described in Schedule A.

Event of Default shall mean any event specified in Section 7.1 to be an Event of Default.

Generally Accepted Accounting Principles shall mean generally accepted accounting principles in effect at the time of any computation hereunder where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made.

Government Securities shall mean bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of interest and principal.

Holder, when used with respect to Trust Certificates, shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean the Person in whose name such Trust Certificate is registered.

Investments shall mean: (a) Government Securities; (b) commercial paper rated in the highest grade by a nationally recognized credit rating agency; and (c) bankers' acceptances and certificates of deposit (including Eurodollar certificates of deposit) issued by (i) any bank or trust company or a foreign branch thereof which is organized under the laws of the United States or any state thereof and has total deposits in excess of One Billion Dollars; or (ii) any full United States branch of a foreign bank if such foreign bank has total deposits (United States Dollar Equivalent) in excess of Ten Billion Dollars.

Lien shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction).

Material Subsidiary shall mean any Subsidiary of the Company (i) the tangible net worth of which shall constitute at least 5% of the consolidated tangible net worth of the Company and its consolidated Subsidiaries or (ii) which shall have contributed at least 5% of consolidated net earnings, exclusive of extraordinary charges and unusual and non-recurring charges, of the Company and its consolidated Subsidiaries in any of the three years immediately preceding the date of determination thereof, both determined in accordance with Generally Accepted Accounting Principles.

Officer's Certificate shall mean a certificate signed by the Chairman of the Board, the President, the Executive Vice President, any Senior Vice President, or any Vice President of the Company.

Opinion of Counsel shall mean an opinion of counsel (who may be counsel to the Company) satisfactory to the Trustee.

Original Purchaser shall mean each of CIGNA Property and Casualty Insurance Company, Horace Mann Insurance Company, Horace Mann Life Insurance Company, The Equitable Life Assurance Society of the United States, Equitable Variable Life Insurance Company and Connecticut Mutual Life Insurance Company and any Affiliate of any thereof.

Person shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, an estate, an unincorporated organization and a government or any department or agency thereof.

Principal Office shall mean the office of the Trustee in the City of Chicago, State of Illinois at which its corporate trust business shall from time to time be conducted.

Released Equipment Funds shall have the meaning specified in Section 6.11.

Rentals shall mean the rental payments required by Section 6.4(B).

Request shall mean a written request for the action therein specified signed on behalf of the Company by the Chairman of the Board, the President, the Executive Vice President, any Senior Vice President, or any Vice President of the Company and delivered to the Trustee.

Subsidiary shall mean any corporation organized under the laws of any state of the United States of America, the Dominion of Canada, or any Province of Canada, which conducts the major portion of its business in the United States of America or the Dominion of Canada, or both, and more than 50% of the stock of every class of which, except directors' qualifying shares, shall be owned by the Company either directly or through Subsidiaries.

Total Authorized Issue shall mean the aggregate principal amount of \$49,084,000 of Trust Certificates executed and issued under Section 3.1.

Trust Certificates or Certificates shall mean the trust certificates issued under Section 3.1 hereof and

any other trust certificates issued hereunder in a transfer, exchange or replacement therefor.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement.

Trustee shall mean HARRIS TRUST AND SAVINGS BANK, an Illinois corporation, and, subject to the provisions of Article Eight, any successor as trustee hereunder.

Trustee's Lien shall mean any Lien resulting from the acts of the Trustee unrelated to the transactions contemplated by this Agreement or resulting from the nonpayment of any taxes based on or measured by the income of the Trustee or the institution acting as Trustee except any Lien resulting from the nonpayment of any such tax which the Company has agreed in this Agreement to pay or reimburse.

Written Direction shall mean a direction or statement in writing contained in one or more substantially concurrent identical written instruments executed by the Holders of not less than 66-2/3% in aggregate principal amount of the outstanding Trust Certificates.

All references herein to Articles, Sections and other subdivisions refer to corresponding Articles, Sections and other subdivisions of this Agreement; and the words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

### ARTICLE THREE

#### TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 3.1. Original Issuance of Trust Certificates.  
Upon the sale of any of the Trust Certificates hereunder the amount equal to the net proceeds of the Trust Certificates so sold shall forthwith, upon issuance thereof, be deposited in cash with the Trustee. The Company shall forthwith, if necessary, deposit with the Trustee any Advance Rental payable by the Company to the Trustee under Section 6.4(A)(1) hereof. Thereupon, the Trustee shall, as the Company shall direct by Request, execute and issue Trust

Certificates in the aggregate principal amount thereof so sold.

The aggregate principal amount of all Trust Certificates which shall be executed and issued by the Trustee under this Section shall not exceed the Total Authorized Issue, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 3.2. Interests Represented by Trust Certificates; Interest; Maturities. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder. The principal amount of each Trust Certificate will be due and payable in ten (10) equal annual installments of principal on each March 1, from and including March 1, 1989 to and including March 1, 1998. Each Trust Certificate shall be dated as of the Date of Original Issue and will bear interest on the principal amount thereof outstanding from time to time at the interest rate stated thereon, payable semiannually on March 1 and September 1, beginning September 1, 1988; provided, however, that for any Trust Certificate whose Date of Original Issue is less than one calendar month prior to an interest payment date, the interest thereon shall be payable beginning as of the first interest payment date next following that interest payment date. Trust Certificates which shall be executed and delivered by the Trustee in accordance with the provisions of Sections 3.5 and 3.6 hereof shall be dated, and shall bear interest from, the Date of Original Issue or the interest payment date to which interest shall have been paid next preceding or coinciding with the date of such execution and delivery, whichever is later to occur.

All payments of principal and interest on the Trust Certificates shall be payable at the Principal Office or agency of the Trustee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of Rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence, the Trustee, as provided in Section 8 and Schedule I of the Purchase Agreements dated as of March 1, 1988 among the Company, the Trustee and the Original Purchasers relating to the issuance of the Trust Certificates or otherwise upon request of the Holder of a Trust Certificate, will, subject to timely receipt of Rentals under Section 6.4(B), mail on the day each such

payment is due its check to such Holder at his address shown on the registry books maintained by the Trustee or at such other address as may be directed in writing by such Holder prior to the date the payment is due, or, as provided in said Section 8 and Schedule I or otherwise upon request of the Holder for wire transfer, will initiate a wire by 10:00 a.m., Chicago, Illinois, time, of immediately available funds to the account of such Holder at such bank as it may designate by notice in writing to the Trustee prior to that date; provided, however, that the Trustee shall make payments of principal and interest to any institutional investor Holder of any Trust Certificate which has entered into an agreement of the character specified in the last sentence of said Section 8 by wire transfer on the date each such payment is due of immediately available funds (to the extent the Company makes such funds available to the Trustee in time to permit such transfer to be made on such date) to such Holder's bank account, the number of which shall be supplied to the Trustee by the Company and is for the time being designated in or pursuant to said Section 8. The Company agrees to pay its Rentals pursuant to Section 6.4(B) at such times and in such funds as will enable the Trustee to comply with this Section 3.2.

SECTION 3.3. Forms of Trust Certificates and Guaranty. The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as provided in Section 8.2 shall be in substantially the respective forms set forth in Article One hereof.

SECTION 3.4. Execution by Trustee. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual signature of its President, or one of its Vice Presidents and its corporate seal shall be affixed or imprinted thereon and attested by the manual signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature shall appear on any of the Trust Certificates shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates shall be adopted by the Trustee and be issued and delivered as though such Person had then been such officer of the Trustee and shall be as effective and binding as though such Person had then been acting as, such officer of the Trustee.

SECTION 3.5. Trust Certificates; Denominations; Registration; Owners Thereof; Transfer or Exchange of Trust Certificates. The Trust Certificates: shall be issuable in denominations of \$1,000,000, or any larger integral multiple of \$1,000, except as may be necessary to reflect any portion



of the aggregate principal amount of the Trust Certificates not evenly divisible by \$1,000, and shall be numbered from 6R-1 consecutively upward; shall be registered, as to both principal and interest, in the respective names of the Holders; shall be transferable in whole or in part upon presentation and surrender thereof for registration of transfer at the Principal Office of the Trustee in the City of Chicago, State of Illinois, accompanied by appropriate instruments of assignment and transfer, duly executed by the Holder of the surrendered Trust Certificate or Trust Certificates or by his duly authorized attorney, in form satisfactory to the Trustee; shall be dated as of the date of issue unless issued in exchange or substitution for another Trust Certificate or Trust Certificates bearing unpaid interest or installments of principal from an earlier date, in which case they shall be dated as of such earlier date; and shall entitle the Holder to interest and installments of principal from the date thereof. The Trust Certificates to be exchanged shall be surrendered at the Principal Office of the Trustee in the City of Chicago, State of Illinois.

The Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates of the same maturity and rate and of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at the Principal Office of the Trustee.

Anything to the contrary herein notwithstanding, the parties hereto and any agent of the Trustee may deem and treat the registered Holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

The Trustee shall cause to be kept at its Principal Office in the City of Chicago, State of Illinois, books for the registration and transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

For any registration of transfer, exchange or discharge from registration, the Trustee may, and at the Request of the Company shall, require the payment of a sum sufficient to cover reimbursement for any stamp tax or other governmental charge connected therewith.

Each Trust Certificate delivered, pursuant to any provision of this Agreement, in exchange or substitution

for, or upon the transfer of, the whole or any part of one or more other Trust Certificates shall carry all the rights to interest and installments of principal accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificates shall be so dated that neither gain nor loss in interest or principal shall result from such exchange, substitution or transfer.

The Trustee shall not be required to transfer or exchange any Trust Certificate for a period of 10 days next preceding any interest payment date.

SECTION 3.6. Replacement of Mutilated or Lost Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new Trust Certificate of like interest rate, tenor, maturity and date, and bearing the same or a different number as the one mutilated, defaced, lost, stolen or destroyed, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate. The Company shall execute its guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee, and to the Company evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also such security and indemnity as may be required by the Trustee and by the Company in their discretion (provided that in the case of any Original Purchaser or other creditworthy institutional investor which is a Holder of any Trust Certificate, its unsecured agreement of indemnification shall be deemed sufficient security or indemnity), and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates, and shall preclude (to the extent lawful) any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

## ARTICLE FOUR

## OPTIONAL PREPAYMENT OF TRUST CERTIFICATES

SECTION 4.1. Optional Prepayment of Trust Certificates. The Company may, at its option, at any time or times on or after March 1, 1993 and prior to maturity, prepay the Trust Certificates as a whole or from time to time in part in multiples of \$500,000 at the following prepayment prices (expressed in percentages of the principal amount remaining outstanding on the Trust Certificates on the date fixed for prepayment), together with accrued interest to the date fixed for prepayment with interest on any overdue principal and, to the extent legally enforceable, on any overdue interest at the rate of 9.9% per annum and upon the conditions, if any, applicable thereto as specified on the form of the Trust Certificates hereinbefore set forth. If prepaid during the twelve-month period beginning March 1

<u>Year</u>	<u>The Prepayment Price Shall Be:</u>
1993	104%
1994	103%
1995	102%
1996	101%
1997	100%

All prepayments hereunder of less than the entire outstanding aggregate principal amount of all Trust Certificates are to be made pro rata among all outstanding Trust Certificates as provided in Section 4.3.

SECTION 4.2. Notice of Prepayment. In case the Company shall desire to exercise such right to prepay the Trust Certificates in accordance with the right reserved so to do, it, or, at its request, the Trustee, in the name of and at the expense of the Company, shall give notice of such prepayment to each Holder of the Trust Certificates, not less than 30 days nor more than 60 days prior to the prepayment date, as hereinafter in this Section 4.2 provided.

Each such notice of prepayment shall specify the date fixed for prepayment and the principal amount of the Trust Certificates to be prepaid on such date and the prepayment price at which Trust Certificates are to be prepaid; shall state that the payment of the prepayment price of the portions thereof to be prepaid will be made at the Principal Office of the Trustee upon presentation and

surrender of such Trust Certificates, that interest accrued to the date fixed for prepayment will be paid as specified in said notice, and that on and after said date, if such prepayment shall then be made, interest thereon or the portion thereof to be prepaid will cease to accrue. In case the Trust Certificates are to be prepaid in part only, the notice shall state that on and after the prepayment date, upon surrender of each Trust Certificate, a new Trust Certificate or Trust Certificates in principal amount equal to the unprepaid portion thereof will be issued.

SECTION 4.3. When Trust Certificates Called for Prepayment Become Due and Payable. Notice of prepayment having been mailed in the manner provided in Section 4.2, the Trust Certificates or portions of Trust Certificates specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable prepayment price, together with interest accrued to the date fixed for prepayment with interest on any overdue principal and, to the extent legally enforceable, on any overdue interest at the rate of 9.9% per annum, and on and after such date fixed for prepayment (unless the Company shall default in the payment of such Trust Certificates so called for prepayment) interest on such Trust Certificates or portions of Trust Certificates shall cease to accrue. Subject to the second paragraph of Section 3.2, on presentation and surrender of such Trust Certificates at said place of payment in said notice specified, the said Trust Certificates, or the specified portions thereof, shall be prepaid by the Company at the applicable prepayment price, together with interest accrued to the date fixed for prepayment (except that if such date be a semiannual interest payment date such payment shall not include accrued interest which shall be paid in the usual manner).

Upon any partial prepayment of the Trust Certificates, the amount so prepaid shall be allocated to all Trust Certificates at the time outstanding in proportion to the unpaid principal amounts thereof, but only in units of \$1,000, and to the extent that such proportionate allocation shall not result in an even multiple of \$1,000, adjustment may be made by the Company to the end that successive allocations shall result in substantially proportionate payments.

Upon presentation of any Trust Certificate which is prepaid in part only, the Trustee shall execute and register and deliver to the Holder thereof, at the expense of the Company, a new Trust Certificate or Trust Certificates of authorized denomination or denominations in an aggregate

principal amount equal to the unrepaid portion of the Trust Certificate so presented.

SECTION 4.4. Purchase Prohibition. The Trustee will not, and the Company will not, and will not permit any Affiliate or Subsidiary to, acquire directly or indirectly, by purchase or prepayment or otherwise, any of the outstanding Trust Certificates or any part thereof except by way of payment or prepayment in accordance with the provisions of the Trust Certificates and of this Agreement or by way of purchase as provided below in this Section 4.4.

The Company or any of its Affiliates may at any time and from time to time (notwithstanding the limitation set forth in Section 4.1), at its option, but subject to the limitations hereinbelow set forth, purchase any of the outstanding Trust Certificates pursuant to an offer to purchase made by the Company or any of its Affiliates on the same terms to all Holders, which offer shall require the Company or any such Affiliate to purchase pro rata among all Trust Certificates so tendered and shall remain open for a period of at least 21 days (but not more than 60 days) after notice has been mailed to all such Holders pursuant to Section 11.4 hereof.

## ARTICLE FIVE

### ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 5.1. Acquisition of Equipment by Trustee. The Company shall cause to be re-manufactured, constructed and/or shall cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the Holders of the Trust Certificates, the Equipment described in Schedule A hereto.

To that end, the Company hereby assigns, or promptly after entering into the contract or contracts for the construction or purchase of certain of such Equipment shall assign, to the Trustee all of its rights, title and interest under said construction contract or contracts and in and to said Equipment. Said Equipment shall be delivered to the Company, which is hereby designated by the Trustee as its agent to accept such delivery, and an Officer's Certificate as to such delivery and acceptance shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the transportation services of the Company, and to include in the trust hereby created, other equipment similar to the Equipment in addition to or in lieu of any units of the Equipment specifically described in Schedule A hereto (prior to the acceptance of such Equipment by the Trustee or its agent or agents), or in the event that any unit of the Equipment described in Schedule A hereto shall suffer a Casualty Occurrence as defined in Section 6.7, prior to such acceptance, the Company may cause to be sold to the Trustee other equipment of the same condition, value and utility to be substituted under the trust, whereupon such other equipment shall become Equipment hereunder, and to that end the Company, upon entering into a contract or contracts for the construction of such other Equipment, shall assign to the Trustee all its rights, title and interest under the said contract or contracts. This Equipment Trust Agreement and Schedule A hereto shall be appropriately supplemented and such supplement duly filed with the Interstate Commerce Commission upon any such addition or substitution.

SECTION 5.2. Payment of Deposited Cash. From time to time, when and as any Equipment shall have been accepted by the Trustee pursuant to Sections 5.1 and 5.3(a), the Trustee shall, on a date specified in, and at least four (4) business days after delivery of, a written notice from the Company to the Trustee and the several counsel specified in Section 5.3(f) hereof as rendering opinions on said date (each such date being herein called a "Delivery Date") pay, upon Request, to the Company against receipt therefor, or as it may direct only out of Deposited Cash then held by the Trustee an amount not exceeding 100% of the Cost of such Equipment, as such Cost is specified in the Officer's Certificate furnished to the Trustee pursuant to Section 5.3(b). No prior written notice shall be required pursuant to the foregoing sentence in the case of the first Delivery Date, which shall be the Closing Date under the Purchase Agreements referred to in the preceding sentence. All Delivery Dates shall occur prior to February 28, 1989.

SECTION 5.3. Supporting Papers. The Trustee shall not pay out any Deposited Cash for the purchase of any unit of Equipment after February 28, 1989, and shall not do so prior thereto unless and until it shall have received the following documents and opinions, all in form and substance satisfactory to the purchasers who are parties to the Purchase Agreements referred to in Section 3.2:

(a) (i) a bill of sale covering such unit of Equipment from the remanufacturer to the Trustee, or (ii) a bill of sale from the remanufacturer to the Company and a bill of sale from the Company to the Trustee, or (iii) a bill of sale from the Company to the Trustee, each of which bills of sale shall specify such unit of Equipment described therein by a number or numbers and shall contain a warranty or guarantee to the purchaser of such unit of Equipment that the title of such unit of Equipment described therein is free from all Liens, and the receipt of such bill or bills of sale by the Trustee shall constitute acceptance by the Trustee hereunder of such unit of Equipment as Trust Equipment;

(b) an Officer's Certificate, dated such Delivery Date, which shall state (i) that such unit of Equipment is Equipment as herein defined, has been marked in accordance with Section 6.6 (and was not put into service prior to the date specified therein) and identifying the remanufacturer or the owner thereof, and (ii) that the Cost of such unit of Equipment is an amount therein specified or is not less than an amount therein specified;

(c) an invoice from the remanufacturer or the owner of such unit of Equipment which, if the owner or remanufacturer is not the Company, shall have endorsed thereon a certification by the Company as to the correctness of the price stated therein;

(d) an opinion of counsel for the Company to the effect that the bill of sale, or bills of sale, as the case may be, referred to in clause (a) hereof, is or are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the purchaser of such unit of Equipment title to such unit of Equipment free from all claims or Liens;

(e) In the case of any Trust Equipment not specifically described in Schedule A, an opinion of counsel for the Company that a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company, and duly filed and recorded in accordance with Section 8.4 hereof;

(f) Favorable opinions, dated such Delivery Date, as follows:

(i) of Messrs. Milbank, Tweed, Hadley & McCloy, covering the matters set forth in clauses (iii), (v) and (vii) of Section 6(a) of the Purchase Agreements referred to in Section 3.2;

(ii) of Richard E. Weicher, Esq., covering the matters set forth in clauses (iii), (v) and (vii) of Section 6(a) of said Purchase Agreements; and

(iii) of Messrs. Sidley & Austin, covering the matters set forth in Section 6(c) of said Purchase Agreements;

(iv) of the Company's special Canadian counsel covering the matters set forth in Section 6(d) of said Purchase Agreements if required by Section 6.10 hereof;

provided, however, that the opinion referred to in subclause (i) above shall be delivered only on the first Delivery Date and shall not be required to be delivered on any subsequent Delivery Date.

(g) A certificate of acceptance for such unit of Equipment, as referred to in Section 5.1;

(h) An Officer's Certificate, and a certificate of an authorized officer of the Trustee, each dated such Delivery Date, as specified in subparagraph (f) of Section 6 of the aforementioned Purchase Agreements, but on and as of such Delivery Date;

(i) Such certificates relating to the Company, the Trustee or any owner or remanufacturer, and covering incumbency and specimen signatures of officers or other representatives of such corporation, as any of the counsel referred to in the foregoing subparagraph (f) may reasonably request in connection with the opinions referred to therein;

(j) An Officer's Certificate certifying that the Company is in compliance with its insurance obligations set forth in Section 6.13 hereof; and

(k) An Officer's Certificate to the effect that the estimated fair market value of said unit of Equipment, as of such Delivery Date, is no less than 133% of the Cost of such unit of Equipment. Upon delivery of the last unit of Trust Equipment, said Officer's Certificate shall also state that the



aggregate fair market value of all units of Trust Equipment is not less than 150% of the total aggregate Cost of all, such units.

SECTION 5.4. Ratio of Cost of Trust Equipment to Trust Certificates. (A) If the aggregate final Cost of the Trust Equipment shall be less than 100% of the aggregate principal amount of Trust Certificates issued hereunder, the Company will at its option either (a) cause to be remanufactured, constructed and/or purchased and transferred to the Trustee by supplement hereto, subject to all the terms of this Agreement, additional Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 100% of the aggregate principal amount of Trust Certificates issued hereunder or (b) pay to the Trustee (in addition to all other amounts to be paid by it under the provisions of this Agreement) as additional rent such amount, if any, as shall, when added to:

(i) The aggregate final Cost of such of the Trust Equipment as shall have been transferred to the Trustee under this Agreement; and

(ii) Any net proceeds from the sale of Trust Certificates, together with any Advance Rentals paid to the Trustee, held by the Trustee after payment of the aggregate final Cost of such Trust Equipment so transferred and delivered;

equal 100 percent of the aggregate principal amount of Trust Certificates issued hereunder.

(B) The Company covenants and agrees that upon delivery of the last unit of Trust Equipment the aggregate fair market value of all units of Trust Equipment as of the day of such delivery shall not be less than 150% of the total aggregate Cost of all such units.

SECTION 5.5. Interest on Moneys Received by Trustee. Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by Section 10.7 hereof shall belong to the Company and be paid to it by the Trustee, if on the date of such payment the Trustee shall have received an Officer's Certificate dated such date certifying that no Default or Event of Default has occurred and is continuing.

SECTION 5.6. Application of Surplus Deposited Cash. Any Deposited Cash remaining in the hands of the Trustee after the delivery of all the Trust Equipment to be delivered pursuant to Section 5.1 and Section 5.3 hereof and payment therefor in the manner provided herein shall, upon Request by the Company, be applied by the Trustee in the manner as described in this Article Five toward the purchase of additional Equipment included as Trust Equipment in accordance with Section 5.1 and Section 6.2 hereof or to the payment of Rentals under Section 6.4 hereof.

## ARTICLE SIX

### LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 6.1. Lease of Trust Equipment. The Trustee does hereby let and lease all the Equipment to the Company, for a term of approximately 10 years ending not later than March 1, 1998.

SECTION 6.2. Inclusion of Additional or Substituted Equipment. In the event that the Company shall, as provided in Section 5.1 or Section 5.4(a) or in Sections 6.7 and 6.10 hereof, cause to be purchased, constructed or remanufactured and transferred to the Trustee other equipment in addition to or in substitution for any of the Equipment herein specifically described, such other equipment shall be included as part of the Trust Equipment by supplement hereto executed by the Company and the Trustee and to be filed with the Interstate Commerce Commission and, if required by Section 6.10 hereof, deposited with the Registrar General of Canada, all in accordance with all applicable requirements and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 6.3. Equipment Subjected Hereto by Delivery. As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee, the same shall, ipso facto and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 6.4. Rental Payments; Limitation on Tax Liability. The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as herein-before provided; and the Company covenants and agrees to pay

to the Trustee (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rents hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment and whether or not at the time any thereof shall have been delivered to the Company):

(A) The Company shall pay to the Trustee, as hereinafter provided, as Advance Rental hereunder, sums which shall be equal to the difference between the Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Sections 6.7 and 6.10 hereof) and the portion of such Cost to be provided out of the net proceeds of the sale of the Trust Certificates, the intention being that, when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee, the Company shall have paid or shall pay to the Trustee, as Advance Rental hereunder, a sum equal to the amount, if any, by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. The Company agrees to pay such Advance Rental as follows:

(1) At the time of issue of the Trust Certificates, a sum which, when added to such proceeds of the sale of the Trust Certificates deposited with the Trustee, will make the total sum deposited equal to the Cost of the Trust Equipment; and

(2) Upon delivery of any of such Trust Equipment, a sum equal to the portion of the Cost of such delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 5.2 hereof.

(B) In addition to such Advance Rental, the Company shall pay to the Trustee, as hereinafter provided, as Rental for the Trust Equipment and whether or not at the time any thereof shall have been delivered to the Company, the following:

(1) (a) The necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided herein, and (b) an amount equal to any expenses incurred or loss of principal

(including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments;

(2) Any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust or of this Agreement which the Trustee, as such, may be required to pay;

(3) The amounts of the interest payable on the Trust Certificates, when and as the same shall become payable, and interest at the rate of 9.9% per annum from the due date upon the amount of any interest which shall not have been paid when due until the same shall be paid in full, to the extent legally enforceable; and

(4) The installments of principal of the Trust Certificates, when and as the same shall become payable, and interest at the rate of 9.9% per annum from the due date of any installment of principal which shall not have been paid when due until the same shall be paid in full, whether upon the due dates thereof or maturity of the Trust Certificates or otherwise under the provisions thereof or of this Agreement.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the Holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of any government or taxing authority of the United States of America or of any state, county, municipality or other taxing authority to be paid on behalf of, or withheld from the amount payable to, the Holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interests of the Trustee or of the Holders of the Trust Certificates may be materially endangered thereby.

#### SECTION 6.5. Termination of Trust and Lease.

After all sums due or to become due from the Company hereunder, under the Purchase Agreement referred to Section 3.2 and under the Company's guarantees endorsed on the Trust Certificate shall have been paid in full, (a) such payments shall be deemed to represent payment of the full

purchase price for the Company's purchase at such time of the Trust Equipment from the Trustee, (b) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) the term of the lease hereunder shall terminate and title to all the Trust Equipment shall vest in the Company, and (d) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon the public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that (subject to Section 6.7 hereof with respect to any Trust Equipment which has suffered Casualty Occurrence) until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or interests on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such interests were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the Holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof; provided, however, that the Trustee, before being required to make any such repayment shall, at the expense of the Company, provide written notice to the Holders that said moneys have not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of such notice, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company. In no event shall the Holders of such Trust Certificates be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

**SECTION 6.6. Marking of Trust Equipment:**  
Permissible Markings. The Company agrees that, at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously marked upon each side of such unit, by a metal plate or otherwise, the following words, in letters not less than one inch high:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT  
FILED WITH THE I.C.C. PURSUANT TO 49 U.S.C. 11303

Such marking shall be readily visible and shall indicate plainly the Trustee's ownership of each unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any such marking shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded as provided in Section 8.4 hereof.

The Trust Equipment may be lettered "ATSF" or "SANTA FE", and may bear the circle and cross emblem of the Company in any of its forms, and may be lettered with the name or initials of any railroad company which is permitted to use such equipment as hereinafter provided, or may be lettered in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein. The Trust Equipment may also be numbered for convenience of identification and bear identifying symbols and lettering of the Company. During the continuance of the lease provided for herein, the Company shall not allow the name of any Person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

SECTION 6.7. Maintenance of Trust Equipment:  
Casualty Occurrences. The Company agrees that it will, at its own cost and expense, maintain and keep each unit of the Trust Equipment (including any parts (other than readily removable additions not required for the safe operation of such unit and not integral thereto) installed on or replacements made to any such unit) (a) in good repair, working order and operating condition, ordinary wear and tear excepted, (b) in compliance in all material respects with all applicable laws and regulations, (c) in accordance with manufacturer's recommendations as to condition and serviceability in order to preserve and maintain manufacturer's warranties with respect to any unit of the Trust Equipment and (d) in any event at least at the same level of maintenance at which the Company keeps equipment which it

owns or leases similar in nature to the Equipment, unless and until it becomes worn out, lost, stolen, destroyed or irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain, or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the final maturity date of the Trust Certificates, being hereinafter called a "Casualty Occurrence"). Within the earlier of 90 days after any unit of the Trust Equipment shall have suffered a Casualty Occurrence or 60 days after any determination thereof, the Company shall deliver to the Trustee an Officer's Certificate describing such unit and stating the then Casualty Value thereof determined as of the date on which such Casualty Occurrence was determined and shall either (a) deposit with the Trustee an amount in cash equal to the Casualty Value or (b) cause to be transferred to the Trustee additional equipment, free from all Liens and encumbrances, of a Cost at least equal to the then Casualty Value of such Equipment having suffered the Casualty Occurrence, and deliver to the Trustee, in respect of such additional equipment, certificates, bills of sale and opinions of counsel, and other supporting papers, all in like manner as provided in Section 5.3 hereof, and in addition, an Officer's Certificate describing such additional equipment and stating the Cost and the then Casualty Value thereof. In the case of any such transfer of additional equipment, Schedule A hereto shall be supplemented and any such supplement duly filed with the Interstate Commerce Commission and, if required by Section 6.10 hereof, the Registrar General of Canada, all in accordance with all applicable requirements. The rights and the remedies of the Trustee to enforce or to recover any of the Rentals shall not be affected by reason of such Casualty Occurrences. Cash deposited with the Trustee pursuant to this Section 6.7 shall be held and applied as provided in Section 6.11.

SECTION 6.8. Reports. The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and at least once in every calendar year, if so required, following the calendar year in which occurs the first delivery of any of the Trust Equipment and during the continuance of the lease provided for herein, an Officer's Certificate stating (a) the amount, description and numbers of all the Trust Equipment that may have become worn out or that may have suffered a Casualty Occurrence since the date of the last preceding statement or then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that in the case of all the Trust Equipment repainted or repaired since the date of the last

preceding statement the plates or marks required by Section 6.6 hereof have been preserved, or that the same when repainted or repaired have been again plated or marked as required thereby, and (b) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request.

SECTION 6.9. Books and Records; Inspection of Property. The Company covenants that it will keep accurate corporate books and financial records, and that so long as any Trust Certificate shall be outstanding, it will permit any Person designated by the Trustee in writing, at the Trustee's expense, to visit and inspect the Trust Equipment, to examine the books of account and records of the Company and its Subsidiaries relating to the Trust Equipment, to make copies thereof and extracts therefrom, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with, and to be advised as to the same by, its and their officers and employees and its and their independent public accountants, all at such reasonable times and as often as the Trustee may reasonably request, it being understood that the Trustee will give reasonable prior notice to the Company of any such visit, inspection, examination, discussion or advice.

SECTION 6.10. Possession of Trust Equipment; Assignments. The Company, so long as an Event of Default shall not exist and be continuing hereunder, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company, and the use thereof, which use is not predominantly outside the United States, upon the lines of the railroad owned or operated by the Company (either alone or jointly with another) or by any Affiliate of the Company (either jointly or with another), or upon lines over which the Company or any such Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment, which use is not predominantly outside the United States, upon connecting and other carriers in the usual interchange of traffic with the Company and upon connecting and other carriers over which through service may from time to time be afforded to the Company, but only upon and subject to all the terms and conditions of this Agreement, and provided in any such case that the Company shall have made all such filings or registrations as may be necessary to ensure that the Trustee's title to and Lien on the Trust Equipment continues to be fully secured and perfected.



Notwithstanding any other provisions of this Section 6.10, prior to (A) the Company's use or possession in Canada of 10% or more of the units of Trust Equipment at any one time, and (B) to any sublease of 10% or more of the units of Trust Equipment under all such subleases in force at any one time, the Company shall deposit, or cause to be deposited, this Equipment Trust Agreement and supplements thereto, if any, and any other relevant documents and agreements with the Registrar General of Canada and shall provide for publication of notice of such deposit, all in accordance with Section 86 of the Railway Act of Canada, and shall deliver to the Trustee a favorable opinion from Canadian counsel for the Company acceptable to the Trustee and the Holders, in form and substance satisfactory to the Trustee and the Holders, to the effect that:

(i) this Equipment Trust Agreement and supplements, if any, have been duly deposited with the Registrar General of Canada in accordance with Section 86 of the Railway Act;

(ii) provision has been made for publication of notice of the deposit of this Equipment Trust Agreement and supplements, if any, as required by Section 86 of the Railway Act; and

(iii) no other filing or recordation is necessary for the protection of the rights of the Trustee to the Trust Equipment in Canada while the Equipment is located, moving or running on or over the lines or tracks of a railway company within the meaning of the Railway Act.

The Company shall not, except as provided in the next succeeding paragraph, assign or transfer its rights hereunder, and shall not without first obtaining the written consent of the Trustee, sublet the Trust Equipment or any part thereof, and in any such case such sublease shall be expressly made subject and subordinate to all the provisions of this Agreement and the rights and remedies of the Trustee hereunder; and the Company shall not, without such written consent, except as provided in this Section 6.10, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment; provided, however, that the Company, so long as no Event of Default or Default shall have occurred and be continuing, shall be entitled without such prior written consent to sublet the Trust Equipment or any part thereof to another Class I railroad company under a sublease for use of the Trust Equipment which is not predominantly outside the United

States and which expressly provides (a) that the rights of the sublessee in and to such Trust Equipment shall be subject to the rights of the Trustee in and to such Trust Equipment, including the rights of the Trustee upon the happening of an Event of Default hereunder and (b) that such Trust Equipment may be lettered or marked for the convenience of identification of the leasehold interest of the sublessee therein only in accordance with the provisions of Section 6.6. hereof; and provided, further, that the Company may, upon giving notice thereof to the Trustee and each Holder, without such prior written consent sublease up to 20% of the Trust Equipment under all such subleases in force at any one time for use which is not predominantly outside the United States provided that the Company shall make such filing, registration and recordation as may be necessary to assure that the Trustee's title to and lien on the Trust Equipment continues to be fully secured and perfected. For all purposes of this Section, use predominantly outside the United States shall mean use such that the Trust Equipment or any part thereof is physically located outside the United States for more than 180 days in any calendar year or more than 180 consecutive days regardless whether in the same calendar year or, with respect to the year in which the Trust Equipment becomes Trust Equipment, fifty percent of the period beginning on the date on which the Trust Equipment becomes such and ending on the last day of such year. The Company shall deliver to the Trustee a copy of any such sublease promptly after its execution.

The Company may assign or transfer its rights and obligations hereunder to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Company whether by purchase from or merger with the Company, provided, however, (a) such railroad or purchaser shall be a solvent corporation duly organized, validly existing and in good standing under the laws of the United States or a state thereof and (b) which, by execution of an appropriate instrument satisfactory in form and substance to the Trustee and the Holders of not less than 66-2/3% in principal amount of Trust Certificates then outstanding, shall expressly assume and agree to perform each and all of the obligations and covenants of the Company hereunder, under the Purchase Agreements referred to in Section 3.2 and under the guaranty endorsed on the Trust Certificates.

The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Company's rights

hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

In the event that prior to the expiration of the term of this Agreement, the use of any unit of Trust Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before the final maturity of the Trust Certificates, the Company's duty to pay Rentals in respect thereof shall continue for the duration of such requisitioning or taking. The Company shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession, but if any Event of Default or Default shall have occurred and be continuing, such sums shall be paid over to the Trustee upon receipt and be applied in like manner as provided in Section 7.3, or paid over to the Company if and when such Default or Event of Default shall have been cured or waived.

SECTION 6.11. Release and Replacement of Trust Equipment. Any units of the Trust Equipment which shall have become unsuitable in any respect for the Company's use may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in the Company, the Trustee will release any such units of the Trust Equipment upon the filing with it of a Request and an Officer's Certificate which shall describe such units, shall state that they have become unsuitable for the Company's use, shall state the selling price thereof, if any, and shall specify the Cost and then Casualty Value thereof. No such release shall be made unless and until the Company shall have paid to the Trustee an amount equal to such selling price or Casualty Value, whichever shall be greater.

Any money paid to the Trustee pursuant to this Section 6.11 or Section 6.7 hereof (the "Released Equipment Funds") shall, so long as no Event of Default or Default shall have occurred and be continuing, be applied, in whole or in part, as the Company shall direct by a Request filed with the Trustee, to or toward the installments of principal of the Trust Certificates, when and as the same shall become payable, or to or toward the Cost of a unit or units of Equipment to replace such unit or units of Trust Equipment being replaced and which unit or units of Equipment shall be

of a quality, value and utility at least equal to such unit or units of Trust Equipment being replaced.

So long as no Event of Default shall have occurred and be continuing, any money paid to the Trustee pursuant to Section 6.7 or this Section 6.11 shall be invested, pending its application as hereinabove provided, in Investments as provided in Section 10.7 hereof.

The Company will cause any replacement unit of Equipment to be marked as provided in Section 6.6. Any and all such replacements of Equipment shall constitute accessions to the Trust Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Trust Equipment delivered hereunder and shall be included in the term "Trust Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all Liens and encumbrances and shall be taken initially and shall remain in the name of the Trustee subject to the provisions hereof, and the Company shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act of an appropriate supplemental agreement describing such replacements and, if required by Section 6.10 hereof, the depositing of such supplemental agreement with the Registrar General of Canada pursuant to Section 86 of the Railway Act) and do, or cause to be done, any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Trustee to such replacements. All such replacements shall be warranted in like manner as the units of Trust Equipment replaced.

Whenever the Company shall file with the Trustee, pursuant to the provisions of this Section 6.11, a Request to apply money to or toward the Cost of a replacement unit of Equipment, the Company shall file therewith in such number of counterparts as may reasonably be requested:

(a) an Officer's Certificate certifying that such replacement unit is Equipment as defined herein and has been marked as required by the provisions of this Section 6.11, and certifying the Cost of such replacement unit and that the Casualty Value of such unit is not less than such Cost; and

(b) an opinion of special Interstate Commerce Commission counsel for the Company that title to such replacement unit is vested in the Trustee free and clear

of all Liens and encumbrances, and that such unit has come under and become subject to this Agreement.

If an Event of Default shall have occurred and be continuing, all money then held by the Trustee pursuant to this Section 6.11 shall be applied by the Trustee as if such money were money received upon the sale of Equipment pursuant to Section 7.3.

In order to facilitate the sale, or other disposition of any unit of Trust Equipment suffering a Casualty Occurrence or no longer being suitable for use, the Trustee shall upon request, after deposit by the Company of the required amount, execute and deliver to the Company or the Company's vendee, assignee or nominee, a bill of sale (without warranties) for such unit, and such other documents as may be required to release such unit from the terms and scope of this Agreement, in such form as may be reasonably requested by the Company.

SECTION 6.12. Indemnification by the Company. The Company covenants and agrees to indemnify the Trustee and each Holder against any and all claims arising out of or connected with the ownership, lease or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states in which the Trust Equipment, or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the Holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof. The obligations of the Company under this Section 6.12 shall

survive the termination of this Agreement and the payment in full of the Trust Certificates.

SECTION 6.13. Insurance. The Company will, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained in full force and effect with financially sound and reputable insurers in such amounts and with such terms (including coinsurance, deductibles, limits of liability and loss payment provisions) as are customary under the Company's risk management programs and in keeping with risks assumed by corporations of established reputation engaged in the same businesses and similarly situated: (i) public liability insurance (including Federal Employer Liability Act coverage) against loss or damage to it for personal injury, death or property damage suffered upon, in or about any premises occupied by it or occurring as a result of the ownership, maintenance or operation by it of any automobile, truck or other vehicle or as a result of the use of products manufactured, constructed, sold or leased by it, or services rendered by it; (ii) all risk property insurance on the Trust Equipment; and (iii) insurance against such other risks as are usually insured against by corporations of established reputation engaged in the same businesses and similarly situated; provided, however, that the Company may self-insure with respect to any or all of the above as is customary under the Company's risk management programs and in keeping with the risks assumed by corporations of established reputation engaged in the same businesses and similarly situated.

## ARTICLE SEVEN

### REMEDIES IN EVENT OF DEFAULT

SECTION 7.1. Events of Default. If any of the following events ("Events of Default") shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or by operation of law or otherwise), that is to say,

(a) the Company shall default in the payment of any part of the Rental (including Advance Rental) payable hereunder within five days after the same shall have become due and payable; or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make or permit any unauthorized transfer or sublease of any of the Trust Equipment, or,

except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 15 days after the Trustee shall have demanded in writing to the Company such cancellation and recovery of possession, or within said 15 days to deposit with the Trustee a sum in cash equal to the Casualty Value of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment provided no other Event of Default shall have occurred and be continuing); or

(c) default shall be made by the Company in the performance and observance of its covenant contained in Section 5.4(B) hereof and the same shall not have been remedied within 30 days of the occurrence thereof; or

(d) the Company shall, for more than 30 days after the Trustee shall have demanded in writing addressed to the Company performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee, as the case may be, for such compliance; or

(e) the lease provided for herein shall be terminated by operation of law; or

(f) any proceedings shall be commenced by or against the Company or any Material Subsidiary under Title 11 of the United States Code, as now constituted or as may hereafter be amended, or any other Federal or state law relating to bankruptcy or insolvency, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, or appointing a receiver or decreeing or ordering the winding up or liquidation of the affairs of the Company or any such Subsidiary, or any similar proceedings (unless such proceedings shall have been discharged, dismissed, stayed or otherwise rendered ineffective within 60 days from the date of the filing thereof (but then only so long as such stay shall continue in force or such ineffectiveness shall

continue)) and all the obligations of the Company hereunder, under the guarantee endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for its property in connection with such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(g) the Company or any Material Subsidiary shall institute proceedings to be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file a petition or answer or consent seeking reorganization or relief under Title 11 of the United States Code, as now constituted or as may hereafter be amended, or any other Federal or state law relating to bankruptcy or insolvency or shall consent to the filing of any such petition or shall consent to the appointment of a receiver or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or action shall be taken by the Company or any Material Subsidiary in furtherance of any of the aforesaid purposes; or

(h) default shall be made by the Company in the performance or observance of any of the covenants, agreements or conditions on its part in the Purchase Agreements referred to in Section 3.2 hereof; or any representation or warranty heretofore or hereafter made by or on behalf of the Company herein or in said Purchase Agreements or in any other certificate or other writing delivered under or pursuant to this Agreement or said Purchase Agreements or in connection with any provision hereof or thereof or related to the transaction contemplated hereby or thereby shall prove to have been false or incorrect or breached in any material respect on the date as of which made, and such default or breach (if remediable) shall continue for a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by any institutional investor which is a Holder of any Trust Certificate; or



(i) the Company or any Material Subsidiary is subject to any final judgment or judgments from which there is no appeal for the payment of money in the aggregate in excess of \$1,000,000 not discharged in full within 30 days of entry thereof or 30 days of the lapse of any stay with respect thereto, whichever shall be later.

then (i) upon the occurrence of any Event of Default described in paragraph (f) or (g) with respect to the Company or any Material Subsidiary, (x) the entire amount of the Rentals (not including Rentals required for the payment of interest on the Trust Certificates accruing after the date of such acceleration but including any unpaid Advance Rental) and (y) the entire aggregate outstanding principal amount of the Trust Certificates and all accrued and unpaid interest thereon, shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by the Company and the Trustee, or (ii) upon the occurrence of any other Event of Default, the Trustee in its discretion may, and upon the written request of the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith (x) the entire amount of the Rentals (not including Rentals required for the payment of interest on the Trust Certificates accruing after the date of such declaration but including any unpaid Advance Rental) and (y) the entire aggregate outstanding principal amount of the Trust Certificates and all accrued and unpaid interest thereon. Further, the Company covenants and agrees that in the event that the Rentals and the Trust Certificates shall have become or been declared immediately due and payable as hereinabove provided, it will pay on demand interest at the rate of 9.9% per annum on any amounts of principal of the Trust Certificates (or portions of Rental allocable to such principal) and, to the extent permitted by law, on any unpaid interest (or portion of Rentals allocable thereto), in each such case from the date such amounts became or were declared due and payable, until the same shall be paid in full. The Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company, and to collect such judgment out of any property of the Company wherever situated.

In case the Company shall fail to pay, or cause to be paid, within the applicable period of grace any installment of Rental payable pursuant to Section 6.4B(3) or B(4) hereof when and as the same shall have become due and payable hereunder the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered

to institute any action or proceedings at law or in equity for the collection of the Rentals so due and unpaid and the recovery of reasonable costs of collection, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or other obligor upon the Trust Certificates under Title 11 of the United States Code or any other Federal or state law relating to bankruptcy or insolvency, or in case a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization shall have been appointed for the Company or for such other obligor or for its property, or in the case of any other judicial proceedings relative to the winding up or liquidation of the affairs of the Company or for such other obligor, the Trustee, irrespective of whether the Rental or Advance Rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 7.1, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the Rentals (not including Rentals required for the payment of interest accruing after the date of such acceleration but including any unpaid Advance Rental) and the entire amount due in respect of the Trust Certificates, as aforesaid, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement) and of the Holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Holders of the Trust

Certificates, to pay to the Trustee such amount as shall be sufficient to cover all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement.

All rights of action and rights to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Trust Certificates, and it shall not be necessary to make any Holders of the Trust Certificates parties to such proceedings.

SECTION 7.2. Remedies. In case of the happening of any Event of Default, the Trustee shall have and may exercise all rights of a secured party under Article 9 of the Uniform Commercial Code of any applicable jurisdiction, and may by its agents enter upon the railroads and premises of the Company and of any sublessee or user of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of Rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the Holders of the then outstanding Trust Certificates hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in

general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the Holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of Rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement.

SECTION 7.3. Application of Proceeds. If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 7.1 and 7.2 hereof, all payments made by or for the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment in the following order of priority of: (a) all proper charges, expenses or advances made or incurred by the Trustee and Holders in accordance with the provisions of this Agreement, (b) interest on the unpaid principal of and, to the extent permitted by law, interest on unpaid interest in respect of the Trust Certificates, and (c) the principal amount of the outstanding Trust Certificates, all such payments to be in full if such proceeds shall be sufficient and, if not sufficient, pro rata among the parties entitled thereto in the order set forth in the foregoing clauses (a) through (c), inclusive.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 7.4. Waiver of Default. If at any time after the principal of all the Trust Certificates shall have been declared and/or become due and payable or if at any time after the entire amount of Rentals shall have been declared and/or become due and payable, all as in Section 7.1 hereof provided, but before March 1, 1998, all arrears of Rentals and Advance Rentals, all regularly scheduled payments of principal and interest on the Trust Certificates, the expenses and reasonable compensation of the Trustee and Holders, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than payments in respect of Trust Certificates and any Rental installments which shall not at the time have matured except by reason of such acceleration) shall be paid by or for the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured, then, and in every such case, the Trustee, if so requested by the Holders of not less than 66-2/3% in principal amount of the Trust Certificates then outstanding shall by written notice to the Company waive the default by reason of which there shall have been such acceleration and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 7.5. Obligations Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the Holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such Holder, shall affect the obligations of the Company hereunder or under the

guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interests on the Trust Certificates.

SECTION 7.6. Delivery of Trust Equipment to Trustee. In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate of the Company for the delivery of the Trust Equipment to it, the Company shall at its own expense forthwith and in the usual manner cause the Trust Equipment to be moved to and assembled at such point or points on such railroad as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of the Company or of any Affiliate of the Company until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish, or cause to be furnished, without charge for rent or storage, the necessary facilities at any such point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 7.7. Trustee To Give Notice of Default. The Trustee shall give to the Holders of the Trust Certificates notice of each Event of Default hereunder actually known to a responsible officer of the Corporate Trust Department of the Trustee immediately upon such officer so learning of the same.

SECTION 7.8. Control by Holders of Trust Certificates. The Holders of not less than 66-2/3% in aggregate unpaid principal amount of the then outstanding Trust Certificates, by Written Directions executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising or refraining from exercising any trust or power conferred on the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction (i) if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken or (ii) if the Trustee shall be advised by counsel that the action so directed may involve

it in personal liability unless it shall have received a satisfactory indemnity therefor. The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with any such direction given hereunder.

SECTION 7.9. Unconditional Right of Holders of Trust Certificates To Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right (which, it is understood, shall exist) of any Holder of any Trust Certificate to receive payment of the principal of, and interest on, such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment or the guarantee thereof by the Company on or after such respective dates, shall not be impaired or affected without the consent of such Holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 7.10. Remedies to be Cumulative. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

## ARTICLE EIGHT

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 8.1. Company to Make Payments Provided For. The Company hereby covenants and agrees to make payment of the reasonable expenses and compensation of the Trustee, and of all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable and of the Rentals (including Advance Rentals) and of the other amounts provided for herein.

SECTION 8.2. Guaranty to Holders of Trust Certificates. The Company covenants, agrees and unconditionally guarantees, for the benefit of each Holder from time to time of an outstanding Trust Certificate, the due and punctual payment of all amounts of principal of, and interest on such Trust Certificate, when and as the amounts thereof shall become due and payable in accordance with the

terms of such Trust Certificate and hereof including, without limitation, interest on overdue principal and (to the extent permitted by law) on overdue interest at the rate therein specified. The Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the interest thereon, in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual signature of one of its authorized officers and the corporate seal of the Company affixed thereto. In case any officer of the Company whose signature shall appear on said guaranty shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the Person who signed said guaranty had not ceased to be, or had then been acting as, such officer.

The Company hereby waives notice of acceptance of this guaranty, of any action taken or omitted in reliance hereon or of any default in the payment of any such sums or in the performance of any covenants and agreements of the Trustee contained herein or in the Purchase Agreements referred to in Section 3.2 hereof and any presentment, demand, protest or notice of any kind. The Company further agrees that the execution and delivery of this Agreement by the Company shall be conclusive evidence against the Company that this guaranty is unconditional and absolute.

The obligations of the Company under this guaranty constitute a present and continuing guarantee of payment and not of collectibility, and shall be absolute and unconditional, and to the extent permitted by applicable law, such obligations shall not be subject to any counterclaim, setoff, deduction or defense based upon any claim the Company may have against the Trustee, or any other Person, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected or impaired by any thing, event, happening, matter, circumstance or condition whatsoever (whether or not the Company shall have any knowledge or notice thereof or consent thereto), including, without limitation: (a) any amendment or modification of or supplement to any provision of this Agreement or any of the Trust Certificates, or any assignment or transfer thereof, including, without limitation, any renewal or extension of the terms of payment of any of the Trust Certificates or the granting of time in respect of any payment thereof, or any furnishing or acceptance of security or any release of any security so



furnished or accepted for any of the Trust Certificates; (b) any waiver, consent, extension, granting of time, forbearance, indulgence or other action or inaction under or in respect of this guaranty, or any of the Trust Certificates, or any exercise or nonexercise of any right, remedy or power in respect hereof or thereof; (c) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceedings with respect to the Trustee, or any other Person or the properties or creditors of any of them; (d) the occurrence of any Event of Default under, or any invalidity or any unenforceability of, or any misrepresentation, irregularity or other defect in, this Agreement or any of the Trust Certificates or any other agreement; (e) any transfer of any assets to or from the Trustee, including, without limitation, any transfer or purported transfer to the Trustee from any Person, any invalidity, illegality of, or inability to enforce, any such transfer or purported transfer, any consolidation or merger of the Trustee with or into any other corporation or entity, or any change whatsoever in the objects, capital structure, constitution or business of the Trustee; (f) any failure on the part of the Trustee or any other Person to perform or comply with any term of this Agreement, the Trust Certificates, the Purchase Agreements or any other agreement; (g) any suit or other action brought by any stockholders or creditors of, or by, the Trustee or any other Person for any reason whatsoever, including, without limitation, any suit or action in any way attacking or involving any issue, manner or thing in respect of this Agreement, the Trust Certificates, the Purchase Agreements or any other agreement; (h) any lack or limitation of status or of power, incapacity or disability of the Trustee or of any director or agent of any of them; or (i) any other thing, event, happening, matter, circumstance or condition whatsoever, not in any way limited to the foregoing.

If the Company shall make any payment in respect of any Trust Certificate pursuant to this guaranty, it shall, to the extent permitted by applicable law, be subrogated to the rights of the Holder of such Trust Certificate in respect of which such payment was made (but shall not for any purpose be deemed Holder of any Trust Certificates); provided, however, that such rights of subrogation and all indebtedness and claims arising therefrom shall be, and the Company hereby declares that they are, and shall at all times be, in all respects subordinate and junior to the prior payment in full of all indebtedness evidenced by the unpaid Trust Certificates. The Company hereby agrees that the foregoing right of subrogation shall not be effective

until, and that it shall not be entitled to receive any payment, under any condition, in respect of any such subrogated claim unless and until, all Trust Certificates and all other amounts which may become due, or are stated in this Agreement to become due, shall have been paid in full or funds for their payment shall have been duly and sufficiently provided.

The Company waives any right it may have to (a) require the Holder of any Trust Certificate to proceed against the Trustee or against any other party, or (b) to require the Trustee to pursue any remedy within the power of the Trustee.

This guaranty shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Trustee or the Company is rescinded or must be otherwise restored by any Holder of a Trust Certificate, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Without limiting the generality of this guaranty, if an Event of Default shall have occurred and be continuing and the Holders of Trust Certificates (or assignees thereof) are prevented by applicable law from exercising their remedies (or any of them) under Section 7.2, the Holders of Trust Certificates (or assignees thereof) shall be entitled to receive hereunder from the Company, upon demand therefor, the sums which would have otherwise been due had such remedies been exercised.

The Company shall pay each Holder of Trust Certificates such further amounts as shall be sufficient to cover the reasonable cost and expense of collecting any sums hereunder, or of otherwise enforcing this guaranty, including, in any case, reasonable compensation to its attorneys for all services rendered in that connection.

SECTION 8.3. Discharge of Liens. The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a Lien or charge upon or against any of the Trust Equipment. The Company will promptly at its own expense take all action necessary to discharge any Lien arising by reason of its non-compliance with the foregoing sentence. If the Company does not forthwith pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any such debt, tax, charge,

assessment, obligation or claim, or Lien, as required by this Section, the Trustee may, but shall not be obligated to, pay and discharge the same and any amount so paid shall be secured by and under this Agreement until reimbursed by the Company.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and not delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like Liens arising in the ordinary course of business and, in each case, not delinquent.

SECTION 8.4. Filing. The Company will, promptly after the execution and delivery of this Agreement, and each supplement or amendment hereto, cause the same to be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and, if required by Section 6.10 hereof, deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provide for publication of notice of such deposit in The Canada Gazette. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record and will refile, reregister and rerecord any and all further instruments required by law (including all applicable laws of the Dominion of Canada or any Province thereof and any other jurisdiction) or reasonably requested by the Trustee for the purpose of proper protection of the rights of the Trustee in and to the Trust Equipment and the rights of the Holders of the Trust Certificates hereunder, and from time to time shall provide such opinions of counsel as reasonably requested by the Trustee with respect to such matters.

Promptly after the execution and delivery of this Agreement and of each supplement or amendment hereto (except that an opinion of Canadian counsel shall only be required as provided in Section 6.10 hereof), the Company will furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, such document or a financing statement relating to such document has been properly deposited, filed, registered and recorded and redeposited, refiled, reregistered and rerecorded, if necessary, so as effectively to protect the rights of the Trustee in and to the Trust Equipment and the rights of the Holders of the Trust Certificates hereunder.

SECTION 8.5. Further Assurances. The Company covenants and agrees from time to time to do all such acts

and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

SECTION 8.6. Payment Notwithstanding Acquisition of Trust Certificates by Company. The Company covenants that it will make payment of the Rentals on account of the Trust Equipment as provided in this Agreement notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment.

## ARTICLE NINE

### CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.1. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the Holders of a specified percentage in aggregate unpaid principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the Holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by Holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 9.2. Proof of Execution of Instruments and of Holding of Trust Certificates. Proof of the execution of any instrument by a Holder of Trust Certificates or his agent or proxy and proof of the holding by any Person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such Person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer. Where such execution is by or on behalf of any legal entity other than an individual, such certificate

or affidavit shall also constitute proof of the authority of the Person executing the same.

The ownership of Trust Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

SECTION 9.3. Right of Revocation of Action Taken.

At any time prior to (but not later than) the evidencing to the Trustee, as provided in Section 9.1, of the taking of any action by the Holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement in connection with such action, any Holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.2, revoke such action insofar as concerns such Trust Certificate. Except as aforesaid any such action taken by the Holder of any Trust Certificate shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the Holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the Holders of all the Trust Certificates.

ARTICLE TEN

THE TRUSTEE

SECTION 10.1. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 10.2. Application of Rentals. The Trustee covenants and agrees to apply and distribute the Rentals received by it under Section 6.4 hereof (other than sums restored to Deposited Cash from Rentals pursuant to Section 6.4(B)(1)(b) hereof) when and as the same shall be received, and to the extent that such Rentals shall be sufficient therefor, for the purposes specified in said Section 6.4(B).

SECTION 10.3. Duties in Respect of the Trust Certificates. The Trustee shall cause to be kept at its Principal Office books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 10.4. Insuring or Taking Possession of Trust Equipment Upon Indemnification; Recording; Reliance on Documents. The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the Holders of the Trust Certificates against all liability and expenses. The Trustee shall not be responsible for the filing or recording or re-filing or re-recording of this Agreement or of any supplement hereto. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of the Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and Opinions of Counsel to be furnished to it under Section 5.3 hereof, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

SECTION 10.5. No Obligation to Enforce Trust Unless Requested and Indemnified. The Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested in writing by the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

SECTION 10.6. Assumption of No Default; Reliance on Notices and Other Documents. The Trustee may for all purposes conclusively assume that the Company is not in

default under the terms hereof prior to the time the same shall be actually known to a responsible officer of the Corporate Trust Department of the Trustee (other than a Default or Event of Default relating to nonpayment of any sum required to be paid to the Trustee hereunder). As to any fact or matter the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

SECTION 10.7 Money Held by Trustee; Authorized Investments. Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among Chicago banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement, the Trustee, as requested by the Company, shall invest and reinvest Deposited Cash and Released Equipment Funds held by it in Investments, at such prices, including any premium and accrued interest, as requested by the Company, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, as requested by the Company, or the Trustee may, in the event funds are required for payment against delivery of Equipment, sell such Investments, or any portion thereof, and restore to Deposited Cash or Released Equipment Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment, including accrued interest.

The Trustee shall restore to Deposited Cash or Released Equipment Funds, as the case may be, out of Rentals received by it for that purpose under the provisions of Section 6.4(B)(1)(b) hereof, an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof, shall be entitled to receive any

profit which may be realized from any sale or redemption of Investments.

SECTION 10.8. No Liability for Trust Equipment; Miscellaneous Matters. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturer, manufacturers, remanufacturer or remanufacturers thereof or the owner or owners thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and willful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

The Company agrees to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of the trust hereby created or the authentication and delivery of Trust Certificates issued hereunder including the costs and expenses of defending against any claim or liability in connection with the



exercise or performance of any of its powers or duties hereunder.

SECTION 10.9. Reports. The Trustee shall, at least once in each year, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company reasonably require, and the Company may from time to time examine the books and accounts of the Trustee relating to the Trust Certificates, to this Agreement and to the acts of the Trustee hereunder.

SECTION 10.10. Resignation and Removal;  
Appointment of Successor Trustee. (a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and the Holders of Trust Certificates. Such resignation shall take effect upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as herein provided in this Section.

(b) The Trustee may be removed at any time by an instrument in writing signed by the Holders of not less than 66-2/3% in aggregate unpaid principal amount of the Trust Certificates then outstanding, delivered to the Trustee and to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the Holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the Holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors or an executive committee thereof shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the Holders of Trust Certificates in the manner provided above if such appointment is made within one year after completion of the notice, in the manner provided in the next succeeding paragraph, of the appointment of a successor trustee by the Company. Every successor trustee appointed pursuant to this Section shall be a national bank or a bank or trust company incorporated under the laws of the State of Illinois or the State of New York having its principal office in the City of Chicago or the City of New York and having a capital and surplus of not less than \$100,000,000,

if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice to the Holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each appointment by the Company of a successor trustee pursuant to this Section 10.10.

SECTION 10.11. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 10.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and, subject to the provisions of Section 10.10(a), thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the Request of the Company or written request of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon written request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act, shall, nevertheless, retain a Lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 10.8.

SECTION 10.12. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, provided such corporation shall be qualified under the provisions of Section 10.10(c), without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 10.13. Trustee's Liens. The Trustee covenants and agrees, for the benefit of the Company and the Holders from time to time of the Trust Certificates, to keep the Trust Equipment free and clear at all times of any Trustee's Lien.

SECTION 10.14. Communications. The Trustee will promptly upon receipt thereof furnish to each Holder of outstanding Trust Certificates a copy of each Officer's Certificate, Written Direction, Request, opinion of counsel, notice or other material communication received by it hereunder, unless it shall have ascertained that a copy thereof shall already have been furnished to such Holder.

SECTION 10.15. Trust Certificates Owned by Company Deemed Not Outstanding. In determining whether the Holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any Affiliate of the Company shall be disregarded.

## ARTICLE ELEVEN

### MISCELLANEOUS

SECTION 11.1. Limitation of Rights. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any Person, firm or corporation, other than the parties hereto and the Holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Holders of the Trust Certificates.

SECTION 11.2. Binding Upon Successors and Assigns. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 11.3. Amendment or Waiver. Any provision of this Agreement or of the Trust Certificates may be amended or waived as provided in a Written Direction with the consent of the Company and the Trustee; provided, however, that without the consent of each Holder of the Trust Certificates affected thereby no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of installments of principal, reduce the rate or extend the time of payment of interest with respect to the Trust Certificates, or effect the time or amount of any required prepayment thereof, (2) reduce the amount of or extend the time of payment of any Rentals

payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement or (3) change the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the Holders of which are required to approve any amendment or to effect any waiver; provided, further, that no supplement to Schedule A to this Agreement solely to describe more particularly Trust Equipment, as provided in Sections 5.3(e), 6.7 or 6.11, shall require any Written Direction of Holders of Trust Certificates.

Subject to the last sentence of this paragraph, the Company and the Trustee may amend or waive any provision of this Agreement without the express consent of the Holders of the Trust Certificates, provided such amendment or waiver, in the reasonable judgment of the Company and the Trustee, shall not be materially adverse to any Holder of a Trust Certificate. Prior to effectuating any such amendment or waiver the Company or the Trustee shall give each Holder 45 days' prior written notice thereof, which notice shall specify in detail any such proposed amendment or waiver. Any such amendment or waiver shall become effective only at the expiration of such 45 days' period unless objected to at or prior to the end of such period by any Holder of a Trust Certificate, and, if so objected to, shall not become effective.

SECTION 11.4. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, at its office in the City of Chicago, Illinois, or such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) in the case of the Trustee, at its Principal Office in the City of Chicago, Illinois, or such other address as may hereafter be furnished to the Company in writing by the Trustee and (c) in the case of the Holder of Trust Certificates, at the address of such Holder appearing upon the books maintained by the Trustee pursuant to Section 3.5 hereof, or as otherwise furnished in writing to the Trustee. An affidavit by any Person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communications.

SECTION 11.5. Counterparts. This Agreement has been simultaneously executed in two or more counterparts

each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 11.6. Date of Execution. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee. This Agreement shall be effective as of the date and year first above written.


SECTION 11.7 Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 11.8. Illinois Law to Govern. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

SECTION 11.9. Legal Holidays. In any case where the date of any interest payment or installment payment of principal or prepayment or maturity of any Trust Certificate or the date of any notice required by the Agreement is, at the place where payment is to be made or notice is to be given (or, in the event of wire transfers pursuant to Section 3.2, the place to which such wire transfers are to be made), a legal holiday or a day on which banking institutions are authorized or required by law to close, then payment of the installment of principal or prepayment or interests may be made on the next succeeding day which is not a legal holiday or a day on which banking institutions are authorized by law to close, and no interest thereon shall accrue for the period after such nominal date.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

HARRIS TRUST AND SAVINGS BANK  
as Trustee

By   
Vice President

ATTEST:

  
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

HARRIS TRUST AND SAVINGS BANK  
as Trustee

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By William J. Smith  
President

ATTEST:

F. P. McHovis  
Assistant Secretary

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this 13<sup>th</sup> day of June 1988, before me personally appeared J. L. SPRENG, to me personally known, who, being by me duly sworn, says that he is Vice President of Harris Trust and Savings Bank, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*John*

My Commission expires on F. A. PIERSON, NOTARY PUBLIC IN AND FOR  
THE STATE OF ILLINOIS, COUNTY OF COOK  
 [NOTARIAL SEAL] MY COMMISSION EXPIRES DECEMBER 7, 1989

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this \_\_\_\_\_ day of \_\_\_\_\_ 1988, before me personally appeared William John Swartz, to me personally known, who, being by me duly sworn, says that he is President of The Atchison, Topeka and Santa Fe Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission expires on \_\_\_\_\_

[NOTARIAL SEAL]



My Commission expires on \_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

Waldemar Jählich

My Commission expires on August 7, 1991

**"OFFICIAL SEAL"**  
Mildred Jaksich  
Notary Public, State of Illinois  
My Commission Expires Aug. 7, 1991

EQUIPMENT TRUST, SERIES 6  
Dated March 1, 1988

SCHEDULE A

<u>Quantity</u>	<u>Type</u>	<u>Estimated Cost</u>	
		<u>Per Unit</u>	<u>Total</u>
23	2300 HP Diesel Electric Locomotives, Original GMC (EMD) Model GP39-2; ATSF, Remanufacturer; Nos. 3427 to 3449, both inclusive.	\$505,000	\$11,615,000
37	3000 HP Diesel Electric Locomotives, Original GMC (EMD) Model SD40-2; ATSF, Remanufacturer; Nos. 5020 to 5036, both inclusive and Nos. 5038 to 5057, both inclusive.	628,000	23,236,000
17	3600 HP Diesel Electric Locomotives, Original GMC (EMD) Model SD45-2; ATSF, Remanufacturer; Nos. 5852 to 5868, both inclusive.	546,200	9,285,400
8	3600 HP Diesel Electric Booster (cabless) Locomotives, Original GMC (EMD) Model SD45-2; ATSF, Remanufacturer; Nos. 5510 to 5517, both inclusive.	538,500	4,308,000
4	Locomotive Electric Power Units, Six-Axle, Original GMC (EMD); ATSF, Remanufacturer; Nos. 141 to 144, both inclusive.	<u>160,000</u>	<u>640,000</u>
<hr/>			
89			\$49,084,400
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